Supreme Court, U.S.
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No. 88-1753

In The

Supreme Court of the United States

October Term, 1988

S.T., ON BEHALF OF HER MINOR CHILD, N.T.,
Appellant,

v.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE AND WARREN ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL,
Appellees.

On Appeal From The Appellate Division, Superior Court of New Jersey

MOTION OF APPELLEE NEW JERSEY STATE BOARD OF EDUCATION TO DISMISS OR AFFIRM

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I. QUESTION PRESENTED

1. Whether this appeal is moot because the statute at issue requiring 10 hours of drug education as part of the health curriculum has been repealed.

2. Whether the determination that S.T. had a state statutory right to have her daughter excused from drug education is an adequate nonfederal ground to support the decision of the Appellate Division, New Jersey Superior Court, so that there is no reason for this Court to consider her First Amendment claim.

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B. The issue of whether a mandated drug education course violates First Amendment rights was not raised before the Appellate Division, whose decision is at issue herein, nor did any court ever pass on the question. 10

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No. 88-1753

In The

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S.T., ON BEHALF OF HER MINOR CHILD, N.T.,
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v.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE AND WARREN ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL,
Appellees.

On Appeal From The Appellate Division, Superior Court of New Jersey

MOTION OF APPELLEE NEW JERSEY STATE BOARD OF EDUCATION TO DISMISS OR AFFIRM

The appellee New Jersey State Board of Education respectfully moves pursuant to Rule 16(1)(b) and (d) to dismiss this appeal or affirm the judgment of the Appellate Division, Superior Court of New Jersey, on the ground that the appellant received the relief she sought based on state statutory grounds, that the matter is now moot, that the constitutional questions presented are so insubstantial as to obviate the need for further review and that they were not properly raised and expressly passed on below, and also because the case does not raise any issue of special importance, does not conflict with federal precedent, and was correctly decided below.

COUNTER-STATEMENT OF THE CASE

This appeal seeks review of a decision of the Appellate Division, Superior Court of New Jersey, holding that the issues raised before it concerning a parent's right to have her child excused from a drug education course were moot because the Legislature had repealed the requirements for that particular drug education course. A review of the procedural history is important to show why an appeal to this Court is inappropriate. Further, it will also demonstrate that the appellant has essentially been granted on state statutory grounds the relief she sought when she initiated this matter, so that this appeal is now frivolous.

The facts of this matter are not controverted. The matter arose when S.T. sent a note dated September 16, 1985 to the principal of the Millville Senior High School, Warren Elliott, requesting that her daughter, N.T., be immediately withdrawn from a drug education course, alleging that the course conflicted with her principles. The drug education course from which she sought to have her daughter excused was then part of a state mandated health course that was required for all secondary school students pursuant to *N.J.S.A.* 18A:4-28.7. S.T. subsequently sent further requests that her child be excused from the drug education program. In response, the principal advised the parent that he had to be certain that her request was reasonable and within administrative policies. He also requested that she provide a written analysis of her specific objections to the drug education program.

On October 16, 1985, the principal advised S.T. that her daughter would remain in the class until there was a judicial determination as to her rights. S.T. thereupon

filed a petition with the Commissioner of Education (Commissioner) pursuant to *N.J.S.A.* 18A:6-9, requesting a declaratory judgment that N.T. could be excused from the drug education portion of the health curriculum. Additionally, she sought a stay of the Millville Board of Education's (Board) refusal to excuse her daughter from its drug education class.

In his Initial Decision after a hearing in this matter pursuant to *N.J.S.A.* 52:14F-1 *et seq.*, the Administrative Law Judge (ALJ) initially noted that *N.J.S.A.* 18A:4-28.7, then in effect, required that each secondary school provide in its health education curriculum a minimum of 10 hours of drug education. The ALJ then reviewed the legislative history of *N.J.S.A.* 18A:35-4.6 *et seq.*, known as the "Parents Rights to Conscience Act of 1979." *N.J.S.A.* 18A:35-4.7 provides:

> Any child whose parent or guardian presents to the school principal a signed statement that any part of the instructions in health, family life education or sex education is in conflict with his conscience, or sincerely held moral or religious beliefs shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom.

The ALJ observed that the committee's statement to the act indicated that the Senate Law, Public Safety & Defense Committee had amended it to eliminate drug education from the list of courses from which children could be excused. Accordingly, the ALJ concluded that *N.J.S.A.* 18A:35-4.6 was inapplicable to warrant an excusal from any portion of the Board's drug education program mandated by *N.J.S.A.* 18A:4-28.7. As a result, N.T. was com-

pelled to attend the classes her mother deemed objectionable. The Commissioner accepted the findings and conclusions of the Initial Decision.

The matter was then appealed to the New Jersey State Board of Education (State Board), the highest level of appeal in the administrative forum. The State Board reversed the conclusions of the Commissioner. It noted that *N.J.S.A.* 18A:35-4.7, the excusal statute, applies to any portion of a health curriculum. *N.J.S.A.* 18A:4-28.7, which mandates that each district provide a drug education program, requires that the program be incorporated into the district's health education curriculum. The State Board therefore reasoned that, because the excusal provided in the statute included any part of the instruction in health, the Board's drug education program taught as part of its health curriculum was encompassed in the excusal statute. The State Board further noted that the language of *N.J.S.A.* 18A:35-4.7 permitting excusal from health was clear on its face; therefore, it was unnecessary to consider the legislative history of the statute. It concluded that the Board must excuse N.T. without penalty.

The State Board, moreover, agreed with the Commissioner that, as an administrative agency, it did not have jurisdiction to decide the constitutional issues raised by S.T. It pointed out, however, that it was unnecessary to consider the constitutional issues in light of its determination that S.T. had a statutory basis to have her daughter excused from the course. It must be strongly emphasized here, that, at the highest administrative level, S.T. was granted what she had sought, to wit, the excusal of her daughter from the drug education course.

The Board then filed a notice of appeal of the State Board's decision with the Superior Court of New Jersey, Appellate Division, on or about January 12, 1987. Notice must be taken, however, that S.T. never appealed to the Appellate Division from the State Board's failure to decide the constitutional issues she had raised at the administrative level. Nor did she appeal any alleged failing grade.

While this matter was on appeal, the Legislature, reflecting its concern with the problems of drugs in New Jersey, enacted *L.* 1987, *c.* 389, effective January 13, 1988. This statute, *N.J.S.A.* 18A:40A-1 *et seq.*, addresses the problems of substance abuse. One portion of the new law established a drug education program requiring that information on the nature of drugs, alcohol, and controlled dangerous substances be taught in each public school to students from kindergarten through twelfth grade, according to curriculum guidelines to be established by the Commissioner. *L.* 1987, *c.* 389 also repealed *N.J.S.A.* 18A:4-28.7, which mandated drug education as part of the health curriculum. It was from that course mandated under the repealed statute that S.T. had sought to have her daughter excused.

The Appellate Division decision in this matter came after the enactment of the new drug education statute and the repeal of *N.J.S.A.* 18A:4-28.7. In its decision the Court noted that the State Board opinion was predicated on a facial interpretation of *N.J.S.A.* 18A:4-28.7 and *N.J.S.A.* 18A:35-4.5. Additionally, it noted that N.T. had not been enrolled in the Millville School for several years, having

completed her education in private school. The Court therefore held that because the Legislature had repealed *N.J.S.A.* 18A:4-28.7, which mandated the course from which S.T. was seeking the excusal of her daughter, and since N.T. was no longer enrolled in public school, the matter was moot both as to N.T. personally and prospectively.

Thereafter, on July 7, 1988, S.T. filed a petition for certification with the New Jersey Supreme Court, alleging that the Appellate Division had erred when it failed to consider S.T.'s First Amendment rights. The petition for certification was denied on December 21, 1988. On March 20, 1989, S.T. filed a Notice of Appeal with this Court pursuant to 28 *U.S.C.* § 1257(2). Subsequently, she filed a Jurisdictional Statement with this Court, but the Jurisdictional Statement was returned to her to correct deficiencies in it. A corrected Jurisdictional Statement was then filed on or about April 13, 1989 but was again returned to the appellant to further correct deficiencies. The Jurisdictional Statement was finally accepted by this Court and this motion on behalf of the State Board followed.

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ARGUMENT

The Question Presented By The Appellant, Whether The Mandating Of Her Daughter Into A Drug Education Program Violated Her First Amendment Rights, Was Never Considered By The Courts Below And Need Not Be Reached Here Because The Appellant Received The Relief She Sought Based On State Statutory Grounds; Moreover, The Appellate Division's Judgment Correctly Determined That The Appeal Was Moot, As The Statute Mandating The Course At Issue Had Been Repealed.

Although the appellant raises the question whether the mandating of her daughter into a drug education program over her parent's objection for reasons of conscience violated her First Amendment rights, it is plain that the appellant does not comprehend the standards this court has established to hear cases from state courts. This is a frivolous appeal because S.T. essentially received the relief she was seeking when she initiated this matter, to wit, the right to have her daughter excused from a drug education program, but that excusal was based on her rights pursuant to state statutory grounds, the Parents Rights To Conscience Act, *N.J.S.A.* 18A:35-7.4. Notwithstanding that she gained an administrative decision establishing a parent's right to remove a pupil from a drug education course incorporated in the health curriculum, it appears that S.T. has appealed to this court only because she prefers to have her victory predicated on constitutional grounds. Moreover, she appears also not to understand that this matter is moot because the Legislature repealed the compulsory course from which S.T. was seeking to have

her daughter excused and because N.T. is no longer enrolled in the public schools of the State of New Jersey. As a result, the circumstances which gave rise to the instant matter are not capable of repetition.

A. The administrative agency acknowledged that S.T. had a state statutory right to have her daughter excused from the objectionable course and the Appellate Division concluded that any further appeal by the Board was made moot by the repeal of the statute at issue requiring her to be in that course; both determinations constitute adequate non-federal grounds, so that there is no need to decide the constitutional issue.

Pursuant to Rule 16.1(b), this Court will not review a decision from a state court if there are adequate non-federal grounds to support the decision. The State Board avers that there are substantial state grounds supporting the Appellate Division's decision, so that there is no need for this Court to consider the constitutional claims. Moreover, S.T. was granted the relief she sought based on statutory grounds, so that there is no need to reach the federal question.

It is necessary to recall here that the decision of the State Board accorded S.T. the right to have her daughter excused from drug education. This decision was predicated not on her constitutional claims but on statutory interpretation. The State Board determined that the interplay of *N.J.S.A.* 18A:35-4.7 and 18A:4-28.7 operated to create a right of excusal for any parent who wished to have a child removed from that portion of the health curriculum which concerned drug education.

Initially, it is important to note that S.T. has no basis for even appealing to this Court. An appeal brings up for review only that which was decided adversely to the appellant. *Loudon v. Taxing District of Shelby County,* 104 *U.S.* 771 (1880). In this matter, the administrative decision favored S.T. The State Board determined that a parent has a right of excusal from the course dictated by *N.J.S.A.* 18A:4-28.7. Secondly, that decision favorable to S.T. was arrived at without need to consider her constitutional claims, and is entirely supportable as comprising adequate State grounds. Because there is another distinct ground on which the judgment below can be sustained, this court will not review the state judgment at issue. *McQuaid v. Trenton,* 172 *U.S.* 636 (1898).

The twist in this appeal is that, after the State Board concluded that N.T. could be excused from the course, the Appellate Division refused to consider the matter any further. The Appellate Division in its opinion determined that the Board's appeal of the State Board's decision regarding *N.J.S.A.* 18A:35-4.7 was moot. It indicated that it was privately moot, as N.T. was no longer a public school student, having completed her education in private school. *See Doremus v. Board of Education,* 342 *U.S.* 429 (1951), (in which the Supreme Court refused to hear a constitutional challenge to Bible reading in public schools where the child had graduated from the public schools before the appeal was taken). It further noted that the matter was prospectively moot as the result of the repeal of the statute, so that it would be unnecessary for the Appellate Division to provide guidance to the public. The same logic applies in this matter. The Court should not squander its

scarce resources deciding a matter which would not give guidance to the public. This Court does not render opinions on moot questions. *American Book Co. v. Kansas,* 193 *U.S.* 49 (1903). It cannot be disputed that mootness as a result of the repeal of the relevant statute is grounds for denying jurisdiction. *Board of Flour Inspectors v. Glover,* 160 *U.S.* 170 (1895). Moreover, this Court will not decide a constitutional question if there is a non-constitutional basis for its decision, *Rogers v. Jones,* 214 *U.S.* 196 (1908), which is the situation herein.

B. The issue of whether a mandated drug education course violates First Amendment rights was not raised before the Appellate Division, whose decision is at issue herein, nor did any court ever pass on the question.

This Court should not decide an issue which was not properly raised and expressly passed on below. Rule 16.1 (b). A decision in the state court which involved no question of federal law is not reviewable by this Court. *Santa Cruz County v. Santa Cruz R. Co.,* 111 *U.S.* 361 (1883). Because S.T. failed to properly raise before the Appellate Division the question of whether mandatory drug education violated her constitutional rights, this Court should not now reach out to decide the issue.

In order to comprehend the State Board's position that S.T. did not properly raise below the issue of her constitutional rights, it is necessary to review briefly the procedural history of the matter. In her petition initiating this matter, S.T. did indeed allege that the requirement of drug education violated her constitutional rights. The ALJ, the Commissioner, and the State Board, however, all

refused to decide that issue, noting instead that administrative agencies in New Jersey do not have jurisdiction to decide constitutional issues. *Paterson Redevelopment Agency v. Schulman,* 78 *N.J.* 378 (1979). Nonetheless, the State Board did accord S.T. the relief she sought. It agreed with her contention that a statute, *N.J.S.A.* 18A:35-4.7, provided her the right to have her daughter excused from that portion of the health course to which she objected.

The Board in turn appealed the State Board's decision to the Appellate Division, alleging that the term "health" as used in *N.J.S.A.* 18A:35-4.7 did not encompass the term "drug education." It must be emphasized here, however, that S.T. never cross-appealed to the Appellate Division to raise the fact that the administrative decision below had not decided her constitutional claims. Nor did she appeal the alleged failing grade she now refers to, but which has no basis in the record. Accordingly, at the Appellate Division level, she was apparently content to accept her victory predicated on statutory interpretation and not pursue her constitutional claims. Thus, the Appellate Division properly could not and did not review her First Amendment allegations.

While it is true that S.T. did note in the appeal her contention that the drug statute violated her First Amendment rights, that position was set forth only as part of her response to the Board's appeal brief filed with the Appellate Division. It was not, as noted *supra,* specifically raised as an appeal of the administrative decision. Clearly then, the Appellate Division had no duty to pass on constitutional claims not properly appealed to it. S.T. then petitioned the New Jersey Supreme Court for certification, raising for the first time in a court of competent jurisdiction her con-

stitutional claim. The Supreme Court denied the petition for certification. Accordingly, neither the Appellate Division nor the Supreme Court ever reviewed her constitutional claim and expressly passed on its validity. As the federal question was not expressly passed on by the state courts, Rule 16.1(b), it is not now justiciable. *Ferry v. King County,* 141 *U.S.* 668 (1891). Since the First Amendment issue was never considered by the courts below, it is respectfully submitted that this Court should not hear the issue.

C. The appellant erred when she filed this appeal pursuant to 28 U.S.C. § 1257(2) because she never challenged the constitutionality of a statute, nor did the court below uphold a state statute in the face of a constitutional challenge when it declared this matter moot because the statute at issue had been repealed.

S.T. has asked this Court to consider this matter pursuant to its authority under 28 *U.S.C.* § 1257(2). That statute, however, authorizes appeals if the validity of a statute has been challenged as repugnant to the Constitution and the decision of the State Court is in favor of its validity. S.T., however, never challenged any statute as being unconstitutional. She asked rather for an excusal for her daughter from the mandated drug education course. She was therefore acknowledging the constitutional right of the Legislature to compel drug education for New Jersey public school pupils. Because no challenge to the constitutionality of a state statute was ever mounted, appeal to this Court pursuant to 28 *U.S.C.* § 1257(2) is inappropriate. *Addington v. Texas,* 441 *U.S.* 418 (1979). Moreover, in this matter, the Appellate Division, New

Jersey Superior Court, the highest state court to have considered the compulsory drug education statute at issue, never upheld its validity. Rather, the court declared the matter moot, since the statute giving rise to this appeal, *N.J.S.A.* 18A:4-28.7, which mandated drug education in the health curriculum, had been repealed. Accordingly, the instant matter does not fit into the clearly circumscribed conditions necessary for an appeal pursuant to 28 *U.S.C.* § 1257(2).

Further, S.T. failed to provide this Court with reasons why this matter should alternatively be considered as a petition for *certiorari.* She has not set forth for this Court how her case meets the standards for *certiorari* established in Rule 17.1(a), (b) and (c).

Given that S.T. was accorded the remedy she sought based on a statutory right and that no other students will be similarly affected by the course at issue, there is no substantial federal question involved regarding her constitutional rights. Accordingly, it is respectfully submitted that this Court should not use its discretionary jurisdiction in a way which would in essence be an exercise in futility.

D. S.T. is asking this court to decide a matter which is not a controversy because no one as yet has sought to be excused from the mandates of N.J.S.A. 18A:40A-1 et seq.

As support for her appeal, S.T. contends that *N.J.S.A.* 18A:40A-1 *et seq.,* the current drug education course, also conflicts with the First Amendment by mandating drug education courses for children whose parents oppose them. But the validity of *N.J.S.A.* 18A:40A-1 *et seq.* is not at issue herein. No one has challenged the statute nor sought

excusal from its requirements, so that the matter has never been considered by the New Jersey courts. In essence, S.T. is seeking review of the statute in a vacuum. This Court, however, decides only actual controversies. *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 *U.S.* 498 (1910). Until parents seek to have their children removed from the new course, the issue of whether it conflicts with the First Amendment may not be brought before this Court.

In sum, based on state statutory grounds, S.T. was granted the right to have her daughter excused from the drug education portion of the health curriculum. She did not appeal the rationale for the decision to the Appellate Division. When the school board sought to appeal that administrative agency determination, the Appellate Division properly determined that the matter before it was moot in that the specific drug education requirement giving rise to this appeal had been repealed. Thus, plainly, there are adequate nonfederal grounds for the decision below; the First Amendment claim raised by the appellant does not warrant review by this Court.

———o———

CONCLUSION

It is respectfully submitted that for the foregoing reasons, the appeal should be dismissed or the judgment of the Appellate Division, Superior Court of New Jersey affirmed because the matter was decided below on state statutory grounds, the matter is now moot, the constitutional questions presented are so insubstantial as not to require further review, nor were they properly raised and expressly passed on below, and also because the case does not raise any issues of special importance, does not conflict with federal precedent, and was correctly decided below.

Respectfully submitted,

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DATED: May 25, 1989

APPENDIX

S.T., on behalf of her minor child, N.T.,	)	
Petitioner-Appellant,	)	
V.	)	STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE CITY OF MILLVILLE, CUMBERLAND COUNTY, AND WARREN E. ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL, Respondents-Respondents.	)	DECISION

Decided by the Commissioner of Education, February 25, 1986

For the Petitioner-Appellant, Joseph F. Shanahan, Esq.

For the Respondents-Respondents, Jacob and Robinson (Frederick A. Jacob, Esq., of Counsel)

This case involves the issue of whether the Parents Rights to Conscience Act of 1979, *N.J.S.A.* 18A:35-4.6 *et seq.*, applies to a district board's drug education course mandated by *N.J.S.A.* 18A:4-28.7 so as to require a student's excusal from the course where the parent presents that the course conflicts with his conscience or sincerely held moral or religious beliefs. The Petitioner in this case is the mother of a high school student, who requested of the Principal that her daughter be immediately withdrawn from the drug education course[1] because

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[1] Petitioner also requested withdrawal from psychology. However, attendance at that course is not at issue in this case.

> . . . research has shown that these courses are permeated with the philosophy of secular humanism which is diametrically (sic) opposed to the Judeo-Christian principles to which we ascribe. . .

A-1.

Petitioner supplemented this request with a letter reiterating her concern that her ". . . constitutional right to free exercise of [her] religion is being offended by forcing [her] daughter to take a course which teaches what we believe to be sinful." A-2. This letter was followed by a form letter again expressing Petitioner's objection that drug education violated her religious and moral beliefs. A-3.

The Principal declined to excuse Petitioner's daughter from the course, observing that Petitioner had refused to follow the Board's procedures by providing an outline of those sections of the text and/or the drug education curriculum to which she objected and the reasons why those sections were objectionable. On October 18, 1985, the County Superintendent responded to Petitioner's request by setting forth the statutory provisions applicable to the situation. Petitioner then filed a Petition for Declaratory Judgment with the Commissioner of Education.

The matter was transmitted to the Office of Administrative Law as a contested case. Before the pre-hearing conference was held, the parties entered a consent agreement whereby Petitioner's daughter would be excused from the second semester of drug education if the Commissioner had not rendered his decision when the semester started.

The Administrative Law Judge (ALJ) then considered the merits of the case. In his Initial Decision, he

found that when the Legislature mandated that each school district incorporate into its health program the recommended drug education unit for a minimum of ten hours per school year, it made no provision to excuse pupils from the program. He further concluded that *N.J.S.A.* 18A:35-4.7, which provides for pupil excusal from certain instruction and which had been enacted ten years after drug education was mandated by the Legislature, did not apply to the drug education course. In reaching this conclusion, the ALJ relied on the Senate Committee's Statement, which stated that the Committee had amended the bill to eliminate drug education from the list of courses from which children could be excused. Although expressing no opinion concerning whether Petitioner's rights to religious expression under the United States Constitution had been violated, the ALJ declared that the Board was under a duty to provide a minimum of ten hours of drug education a year to its students as part of the health curriculum, and that all of those students are required without exception to successfully complete a minimum of ten hours of instruction in drug education.

The Commissioner concurred with the ALJ's determination that *N.J.S.A.* 18A:35-4.7 is inapplicable to the drug education course mandated by *N.J.S.A.* 18A:4-28.7. Although he agreed with Petitioner that, since it is part of the health program, drug education would appear to be one of the portions of the program from which students could be excused pursuant to *N.J.S.A.* 18A:35-4.7, the Commissioner, like the ALJ, relied on the Senate Committee's Statement to conclude that the Legislature did not intend that the Parents Rights to Conscience Act of 1979 apply

to the drug education course. In reaching this conclusion, the Commissioner placed further reliance on the Committee Statement accompanying amendment to *N.J.S.A.* 18A: 35-4 (amended 1980), which mandated the Commissioner to update curriculum in the area of drugs and alcohol. That Statement, which was approved by the Legislature, *see N.J.S.A.* 18A:35-4, emphasized that effective instructional programs on the use of alcoholic beverages are essential to the development of responsible attitudes and habits in the use of such beverages. Based on the two Committee Statements, the Commissioner concluded that the Legislature fully intended that children in the public schools shall be provided a course in drug education without excusal.

Like the ALJ, the Commissioner declined to resolve the constitutional claim involved in this case, determining that he did not have the authority to decide the constitutionality of a statute. He, however, found that the courts' holding in *Smith v. Ricci,* 89 *N.J.* 514 (1982), was inapposite in resolving such claims since, in contrast to sex education and family life, the Legislature had stated that excusal from drug education is not available.

In sum, the Commissioner found that the Board was under a duty to provide ten hours of drug education per year and that pupil excusal pursuant to *N.J.S.A.* 18A:35-4.7 was inapplicable to the drug education course. He therefore directed that all students subject to *N..S.A.* 18A:4-28.7 be required without exception to successfully complete a minimum of ten clock hours of instruction in drug education. For the reasons that follow, we reverse the Commissioner's decision.

The threshold question in this case is whether *N.J.S.A.* 18A:35-4.7 is applicable to the District's drug education course, which is mandated by *N.J.S.A.* 18A:4-28.7. *N.J.S.A.* 18A:35-4.7, which is part of the Parents Rights to Conscience Act of 1979, provides that

> Any child whose parent or guardian presents to the school principal a signed statement that any part of the instructions in health, family life education or sex education is in conflict with his conscience, or sincerely held moral or religious beliefs shall be excused from the portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom.

Thus, the words of the statute mandate that, upon presentation of a signed statement that any part of the instructions in *health,* family life or sex education conflicts with a parent's conscience or beliefs, the student must be excused from that part of the course without penalty.

In turn, *N.J.S.A.* 18A:4-28.7 mandates that each district having secondary school grades must incorporate into its *health* education curriculum the recommended drug education unit for a minimum of ten hours per school year as part of the ongoing *health* education curriculum for secondary school grades.[2] Thus, the words of the statute

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[2] The recommended unit includes the following components: information about chemical substances, skill development aimed at establishing personal priorities, promotion of personal identity, coping skills, attitudes and values that influence a student's decisions about a choice of behavior, interpersonal skills, alternative activities, group skills and a healthy school climate. NEW JERSEY DEPARTMENT OF EDUCATION, DESK REFERENCE MANUAL OF STUDENT DRUG AND ALCOHOL USE: A COMPREHENSIVE PLANNING GUIDE (1985).

mandate that the drug education unit be included as part of every district's instruction in health, and preclude offering the unit as part of any other area of instruction. Further, although mandating that every district provide drug education, the words of the statute do not require that every student without exception complete the unit.

It is well established the meaning of a statute first must be sought in the language of the statute. *Sheeran v. Nationwide Mut. Ins. Co., Inc.*, 80 *N.J.* 548 (1979). If the language of a statute is clear and unambiguous on its face, we may not go beyond the words of the statute in order to devine the Legislature's intent. *State v. Butler*, 89 *N.J.* 220 (1982). In such cases, the language of the statute is the full expression of what the Legislature intended, and, although legislative history may be utilized to provide reassuring confirmation of literally apparent meaning, *e.g., Gauntt v. City of Bridgeton*, 194 *N.J. Super.* 468 (App. Div. 1984), extrinsic materials may not be used to create ambiguity or to determine that the Legislature intended something other than that which it actually expressed. *Safeway Trails, Inc. v. Furman*, 41 *N.J.* 467 (1964), *appeal dismissed and cert. denied*, 379 *U.S.* 14; *Gauntt v. City of Bridgeton, supra.* We find that the words of the statutes involved here are clear and unambiguous, and that application of the language of each neither results in conflict between them nor leads to absurd or anomalous results. *Robson v. Rodriguez*, 26 *N.J.* 517 (1958).

On its face, *N.J.S.A.* 18A:35-4.7 mandates excusal as specified in the statute from *any part* of the instruction in *health*, and there is no provision in the statute exempt-

ing any part of the health curriculum from the terms of the statute. As stated, *N.J.S.A.* 18A:4-28.7 clearly mandates that the drug education unit be as part of the health education curriculum. Thus, the language of *N.J.S.A.* 18A:35-4.7 would require excusal from the drug education unit mandated by *N.J.S.A.* 18A:4-28.7 under the conditions prescribed by *N.J.S.A.* 18A:35-4.7 if no exception was made for drug education. Our review of the statutory language fails to reveal such exception. As stated, *N.J.S.A.* 18A:4-28.7 mandates only that each district provide the drug education unit, but does not require that each student complete the unit.

Nor does consideration of the legislatve history of the applicable statutes alter our conclusion that *N.J.S.A.* 18A:35-4.7 requires excusal of a student from the drug education part of the health curriculum where the parent presents that this part of the instruction in health conflicts with his conscience or sincerely held moral or religious beliefs. The Committee Statement that accompanied the bill that was enacted as *N.J.S.A.* 18A:35-4.7 stated that the Committee had amended the bill to eliminate drug education from the list of courses from which children could be excused. However, since *N.J.S.A.* 18A:4-28.7 mandates that the drug education unit be incorporated as part of every district's health curriculum and since instruction in health was specified as subject to excusal by *N.J.S.A.* 18A:35-4.7, it was not necessary that the Legislature specifically list the drug education unit in the statute in order for that statute to apply to drug education. We therefore cannot read the Committee's Statement to eliminate drug education from the courses specifically listed in the statute as an

unambiguous statement that it intended to exempt drug education from the *N.J.S.A.* 18A:35-4.7.

Nor does the Committee Statement accompanying amendment to *N.J.S.A.* 18A:35-4 (amended 1980) conflict with the application of *N.J.S.A.* 18A:35-4.7 to drug education. As set forth above, that statement emphasizes the importance of effective instructional programs on the use of alcoholic beverages to the development of responsible habits and attitudes in the use of such beverages. Although the State Board shares the Legislature's view concerning the importance of instructional programs on alcoholic beverages, and endorses the Legislature's commitment, as expressed in *N.J.S.A.* 18A:4-28.7, to insure the provision of similar instructional programs on drugs, we cannot construe either the Committee Statement accompanying amendment to *N.J.S.A.* 18A:35-4 or the statutes mandating that each district provide instruction on these subjects as a clear expression that, despite the words of *N.J.S.A.* 18A:35-4.7, the Legislature intended to exempt drug education from the application of that statute. In the absence of clear and unambiguous indication that the Legislature intended to exempt the drug education unit from excusal pursuant to *N.J.S.A.* 18A:35-4.7, we may not legislate such exception. *c.f., Department of Environmental Protection v. Franklin Tp.,* 181 *N.J. Super.* 309 (Tax Ct. 1981).

As set forth above, we conclude that the language of *N.J.S.A.* 18A:35-4.7 requires that upon presentation of a signed statement by the parent or guardian of a student that the part of the instruction in health designated as drug education conflicts with his conscience or sincerely held

moral or religious beliefs, the student must be excused from that instruction without penalty. Petitioner's request for the excusal of her daughter from drug education meets the requirements of *N.J.S.A.* 18A:35-4.7, and we therefore find that, pursuant to the statute, the District must excuse Petitioner's daughter from the drug education part of its health curriculum without penalty.

In so finding, we emphasize that the State Board is committed to fulfilling the mandate of *N.J.S.A.* 18A:4-28.7, and strongly holds that participation in the mandated instruction on the subject of drugs and their abuse is essential in order that each student may develop the ability to avoid drug abuse. However, we reiterate that we may not alter the applicable statutory provisions as they were enacted by the Legislature, and that we may not utilize the legislative history to create ambiguity in the otherwise clear language of the statute. *e.g., Guantt v. City of Bridgeton, supra.* We further emphasize that our application of *N.J.S.A.* 18A:35-4.7 may not be colored by the fact that we may not share the beliefs of a parent seeking excusal pursuant the statute.

Finally, we, like the Commissioner, emphasize that we do not have jurisdiction to determine the constitutional claim made by Petitioner. *Reed by Through Reed v. Attorney General,* 195 *N.J. Super.* 172 (App. Div. 1984); *Paterson Redevelopment Agency v. Schulman,* 78 *N.J.* 378 (1879). However, in light of our conclusion concerning the applicability of *N.J.S.A.* 18A:35-4.7 to drug education as mandated by *N.J.S.A.* 18A:4-28.7, we need not consider the question of whether Petitioner's right to the free exercise of religion under the United States Constitution would

be violated had the Legislature required that all students in the public schools complete the mandated drug education unit without exception.

For the reasons set forth above, we reverse the Commissioner's decision. In doing so, we find that oral argument is not necessary in order for us to arrive at a fair resolution of this case and, therefore, deny the Board's motion for oral argument, which it filed after it submitted its exceptions to our Legal Committee's Report in this matter.

Alice Holzapfel opposed.

Attorney exceptions are noted.

December 3, 1986

Date of Mailing Dec. 5, 1986.